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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 490 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANNA P PATIL

Versus

TRAMBAKBHAI BARKUBHAI MAHALE

Appearance:

MR DF AMIN for Petitioner

MS VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/1999

ORAL JUDGEMENT

#. This Revision Application is filed by the original defendant-tenant invoking the provisions of sections 29(2) of the Bombay Rent Act (hereinafter referred to as the Act). The applicant herein is the original defendant and was occupying the premises which is a room

admeasuring 8' x8' bearing Municipal Census No.58/18/1/80 in a chawl consisting of several rooms situated in Rakhial limits of Ahmedabad City since 1973. The opponent-original plaintiff had filed a suit being HRP Suit No.1204 of 1976 against the applicant-defendant-tenant in the Court of Small Causes at Ahmedabad praying for a decree of eviction on the ground of arrears of rent and nuisance and annoyance. The suit premises was let out to the defendant at a monthly rent of Rs. 20/-. According to the plaintiff, the defendant did not pay the rent regularly and was in arrears from 10.12.1974. Therefore, a notice was given to the defendant demanding arrears of rent. Said notice was served on the defendant on 13.2.76. Inspite of the said notice, the defendant did not comply with the same nor handed over possession. The defendant also failed to give any reply to the notice. Hence aforesaid suit was filed on the ground of arrears of rent and additional ground which was taken in the plaint was that the defendant is making use of the margin land and is keeping cycles and is throwing rubbish and thereby causing nuisance to the neighbors and causing damage to the gutter.

#. The defendant appeared in the suit and filed his written statement exh.12. It was averred in the written statement that the suit room is in a dilapidated condition and the plaintiff failed to carry out the repairs. It was contended that the standard rent of the premises cannot be more than Rs.6/- per month and that the demand of rent at the rate of Rs. 20/- p.m. is excessive. It was prayed that standard rent should be fixed. It was denied that he was irregular in making payment of rent. It was also further stated that he paid Rs. 200/- as deposit to the plaintiff. That the plaintiff has also demanded municipal taxes to which the defendant had refused to pay and therefore, the plaintiff had not accepted the rent offered by the defendant. It was therefore averred in the written statement that he was not in arrears of rent and that the suit is required to be dismissed. The defendant also denied the allegations of nuisance and annoyance. The defendant also amended the written statement and took up a plea that the plaintiff is not the owner of the suit property and therefore, he is not entitled to collect the rent from the defendant as the land below the suit premises belongs to one Ramanlal Pushpaben and Jagdishbhai and others. He accordingly disputed the title of the plaintiff over the suit property. The learned Trial Judge framed various issues at exh.18. The Trial Judge came to the conclusion that the plaintiff has proved that

the defendant is in arrears of rent. The Trial Judge also came to the conclusion that the plaintiff is the landlord within the meaning of sections 12 and section 13(1) of the said Act and he is also entitled to recover possession of the suit premises. The Trial Court fixed the standard rent at Rs. 15/- p.m. inclusive of municipal taxes. The Trial Court also came to the conclusion that the suit notice was legal and valid. The Trial Court accordingly decreed the suit for possession by its judgment dated 24.8.79 and fixed the standard rent at Rs. 15/- ,p.m. inclusive of municipal taxes.

#. Being aggrieved by the said judgment and decree the applicant herein preferred an appeal being Civil Appeal No. 303 of 1979 before the Appellate Bench of the Court of Small Causes at Ahmedabad. The respondent landlord also filed cross objections before the Appellate Bench on the ground that the standard rent should have been fixed at Rs.20/- p.m. and there was no reason to decrease the same to Rs. 15/- p.m. The appellate Bench by its judgment and order dated 30.12.1982 dismissed the appeal of the present applicant and accordingly confirmed the judgment and decree for possession passed by the Trial Court in favour of the present opponent. The appellate bench also allowed the cross objections of the present opponent and fixed the Standard Rent of the suit premises at Rs. 20/- p.m. Aforesaid judgment and decree of the Appellate Bench of the Court of Small Causes at Ahmedabad is impugned in the present Revision Application.

#. At the time of hearing of this Revision Application, Mr. Amin learned advocate for the applicant argued the following points:

1. That the Appellate Bench has committed an error in coming to the conclusion that the case would fall under section 12(3)(a) of the said Act and as there was a demand of municipal tax, the case would fall under section 12(3)(b) of the said Act and not under section 12(3)(a) of the said Act.

2. That since the tenant has deposited the rent regularly before the Appellate Court, he was entitled to protection under section 12(3)(b) of the said Act and therefore, the decree for possession is required to be set aside.

#. So far as the arguments on point no.1 is concerned, there are certain factual aspects which are not in dispute. It is not in dispute that a demand

notice was served on the defendant on 13.2.1976 at exh.19. In the said notice, demand of rent was made for a period between 10.12.74 and 9.2.1976 for 14 months at the rate of 20/- per month. The defendant had received the notice but failed to give any reply nor raised any dispute as to the standard rent within one month of the receipt of the notice . It is true that a reference is made in the suit notice as well as in the suit by the plaintiff to the effect that the defendant is also liable to pay municipal tax. However, no specific amount of municipal tax is demanded either in the suit notice or even in the plaint. The plaintiff has not asked for any amount worth the name either in the plaint or in the suit notice. In that case it can be said that the rent is payable by month. It is argued that so far as municipal tax is concerned, the same is not required to be paid every month and it is to be paid yearly and therefore, the same cannot be said to be payable by month. However, if there was no specific demand by the land lord in the suit notice or even in the plaint, then it can be said that the rent is not payable by year. Here except making a statement in the suit notice as well as in the plaint to the effect that the tenant is also liable to pay municipal tax , there is nothing on record to show that the landlord has made a specific demand of the municipal tax from the tenant. The tenant, therefore, has not raised the aforesaid point either before the Trial Court or before the Appellate Court to the effect that in view of the demand of municipal tax, the case would fall under section 12(3)(b) of the said Act. The said point is raised for the first time in this Revision Application by Mr. Amin.The contention of Mr. Amin that the rent is not payable by month is not correct and in that view of the matter the case would fall under section 12(3)(a) of the Act and therefore, it is not necessary to examine whether he has paid rent regularly or not as envisaged by section 12(3)(b) of the Act.

#. There are two eventualities when the case may be taken out from section 12(3)(a) of the Act. Firstly , if the rent is not payable by month, then in that case section 12(3)(b) would apply. However, as observed earlier, it cannot be said that rent is not payable by month especially when there is no demand of tax in the notice or in the plaint. The second eventuality would be that if there is any dispute of standard rent , within one month of the suit notice, the case would fall under section 12(3)(b) of the Act. However in the instant case there is no reply to the suit notice. It is not in dispute that the tenant has not raised any dispute regarding standard rent within one month after receiving

suit notice either by raising a dispute by way of giving reply to the suit notice or even by filing a substantive standard rent application in the court. Mr. Amin is not in a position to point out that any dispute of standard rent was taken within one month of the receipt of the suit notice.

#. The learned Appellate Bench in para 9 of his judgment has dealt with the aforesaid point in great details. It has also been stated in the said para that though the appellant defendant received the notice on 13.2.76, right upto the dated 27.7.76, no attempt was made by the appellant-defendant to pay or to tender the rent to the respondent plaintiff to show his readiness and willingness to pay the rent. The Appellate Bench has also appreciated the evidence on record and reached to a conclusion that the say of the defendant about the payment of Rs. 200/- by way of deposit to the plaintiff is not believable and even the defendant failed to give reply to the suit notice and for the first time such contention was taken in the written statement. There is also no documentary evidence to prove the said payment. Therefore, the tenant has failed to point out that he has paid any amount to the landlord at any point of time. Therefore, the finding on the said point is clearly within the realm of appreciation of evidence.

#. On behalf of the respondents, a reference was made to the judgment of the Honourable Supreme Court in the case of Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani & ors. reported in 31(1) GLR 209. The following observations have been made in para 6 of the said judgment:

> "It has been urged by the learned Counsel for the tenants that November 14,1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial Court on that day, the tenants had deposited the entire arrears of rent on January 9,1968 within the time granted by the Court and continued to deposit the monthly rent thereafter they could not be treated as defaulters in payment of rent even if the amendment made in sub-section (3) of Sec. 12 by the Amendment Act 18 of 1987 was ignored. We, however , find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand had been served on the tenants under sub-sec.(2)

of Sec. 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-sec. (3) of Sec.12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-sec.(3) on the face of it was not attracted inasmuch as the said clause applied only to a case not covered by clause (a). This is amply borne out by the use of the opening words "In any other case" of clause (b). In Harbanslal Jagmohandas & anr. vs. Prabhudas Shivlal 1977 (1) SCC 576 these clauses (a) and (b) of sub-sec.(3) of Sec.12 of the Act came up for consideration and it was held that the tenant can claim protection from the operation of Sec.12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was therefore, inevitable. In Jaywant S. Kulkarni & ors. vs. Minochar Dosabhai Shroff & ors. 1988 (4) SCC 108 clause (a) and (b) of sub-sec.(3) of Sec. 12 again came up for consideration. It was held:

"Sub-sec.(3)(a) of Sec.12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in iosub-sec.(2) the Court shall pass a decree for eviction in any such suit for recovery of possession. In the instant case, as has been found by the Court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent

> or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-sec.. (2) . The Court was bound to pass a decree for eviction in any such suit for recovery of possession."

Thus once the case falls under section 12(3(a) of the Act, there is no option left for the court but to pass a decree for eviction.

#. In view of the aforesaid facts and circumstances of the case the decree for possession passed by the Trial Court and confirmed by the Appellate Bench cannot be interfered with in this Revision Application. Therefore, there is no justification in any of the aforesaid two points canvassed by Mr. Amin at the time of hearing of this Revision Application. The Appellate Bench has also given alternative finding on section 12(3)(b) of the Act. The Appellate Bench has also observed on page 13 of the judgment that the defendant has not paid the rent regularly during the pendency of the appeal and therefore, he is not entitled to get protection under Sec.12(3)(b) of the Act. However, Mr. Amin argued that aforesaid finding is not correct because he had paid the rent regularly during the pendency of the appeal. However, so far as the finding of the Appellate Court on the said point is concerned, it is in the alternative to section 12(3)(a) of the Act. However, as observed above, since the present case squarely falls under section 12(3)(a) of the Act it is not necessary to examine the question whether the tenant had deposited the rent regularly or not so as to give protection under section 12(3)(b) of the Act. The tenant has admittedly not raised any dispute within one month of the receipt of the suit notice about standard rent and has not filed any substantive standard rent application within one month. The defendant therefore, cannot be saved from the clutches of eviction decree under section 12(3)(a) of the Act.

##. The Appellate Bench has allowed the cross objections filed by the respondent-landlord and standard rent of the suit premises is fixed at Rs.20/- inclusive of Municipal taxes. Therefore, when the rent is also fixed inclusive of tax, the tenant has to pay only the fixed quantified amount of rent.

##. In view of the aforesaid circumstances, there is no

substance in this Revision Application and the decree for possession is required to be confirmed on the ground of arrears of rent. No other points were canvassed on behalf of the applicant-tenant. The Revision Application therefore, fails and the same is dismissed. Rule discharged with no order as to costs.

##. However, Mr. Amin has requested that some time may be granted to the applicant for finding out suitable accommodation and looking to his poor financial condition it will be very difficult for him to find out suitable premises within a short period and therefore, reasonable time may be granted to him to vacate the suit premises. Learned advocate for the opponent has no objection if reasonable time is granted to the the applicant for vacating the suit premises. Looking to the fact that the applicant is in a poor financial condition it will be very difficult for him to find out alternative premises within a short period. I therefore, direct that the decree for possession shall not be executed for a period of two years i.e. upto 31.12.2001 on the applicant filing a usual undertaking before this court clearly stating in the undertaking that he will hand over vacant and peaceful possession of the suit premises to the landlord on or before the aforesaid date and that in the meanwhile he will not part with the possession in any manner. He will also continue to pay mesne profit regularly every month at the rate of Rs.20/-. Aforesaid undertaking should be filed within six weeks from today. If the undertaking is not filed, the decree for possession to be executed forthwith.

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